UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/NGO/13
3 February 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 17 of the provisional agenda

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 December 1994]

Status of the International Covenants on Human Rights

1. States parties to international treaties sometimes make reservations when ratifying those multilateral instruments. The number of reservations attached to human rights treaties is among the highest. The United Nations Human Rights Committee has criticized reservations of a general nature (or declarations or understandings that, however constituted, may have the same effect as a reservation) that effectively nullify any Covenant right that might have required amending national law to ensure compliance. The Committee, in its General Comment No. 24 (52), expressed concern about such reservations and their equivalents, stating that they "essentially render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations". In such circumstances, the Committee notes, no real international rights or obligations have thus been accepted (CCPR/C/21/Rev.1/Add.6, para. 12).

2. Human Rights Watch shares this view. We are also concerned that the proliferation of "reservations", "declarations" and "understandings" weakens human rights treaties and threatens the effectiveness of the international human rights law. In the view of Human Rights Watch, the United States is particularly guilty of this practice in its ratification of the International Covenant on Civil and Political Rights (ICCPR). We are particularly concerned that the United States Government has rendered its ratification of the ICCPR a cosmetic gesture by declaring that the treaty should not be considered to be self-executing and announcing that implementing legislation is unnecessary because the United States Government is supposedly in full compliance with the treaty's obligations (other than those for which specific reservations, declarations and understandings were entered).

Introduction

3. The United States Government has used three devices to deny Americans the protection of international human rights law as a supplement to existing domestic constitutional and statutory rights guarantees:

(a) First, through a series of reservations, declarations and understandings proposed by the Bush Administration and accepted by the United States Senate, it carved out every provision of the treaty that might have granted expanded rights to Americans. Most disturbingly, it reserved the right to continue to execute persons for crimes they committed when under 18 years of age;

(b) Second, it effectively pronounced the United States in full compliance with the remaining treaty provisions, and declared that the provisions of articles 1 through 27 are not "self-executing";

(c) Third, it announced that no implementing legislation was necessary.

These actions deny Americans the right to rely on the treaty in United States courts, a right they would have had if the United States Government had either declared the Covenant to be self-executing or enacted implementing legislation to create causes of action under the treaty. The result is a gesture for external consumption rather than an act that has any meaning for Americans.

Death penalty reservation

4. Human Rights Watch believes that the reservations, declarations and understandings attached to the Covenant by the United States - with the exception of its reservation to article 20, which seeks to preserve a more expansive interpretation of freedom of speech than provided by the Covenant - are either unnecessary, because they are intended simply to signify that United States law and practice already conform to or should be interpreted as conforming with the provisions of the ICCPR, or inconsistent with the purpose of the Covenant. The United States reservation on juvenile executions falls into the latter category.

5. Article 19 (3) of the Vienna Convention on the Law of Treaties stipulates that reservations must be compatible with the object and purpose of a treaty. As the Human Rights Committee has observed, "reservations that offend

peremptory norms would not be compatible with the object and purpose of the Covenant" (ibid., para. 8). The Committee goes on to cite as examples a State's reservation of the right to "execute pregnant women or children". The United States has taken this proscribed step in its reservation to article 6, section 5, with respect to the execution of children.

6. We note that the United States Government's restrictions on the applicability of the Covenant have occasioned considerable objection from other States. Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain and Sweden have objected to the United States reservation on the execution of juveniles. This is by far the largest number of objections registered to any nation's reservation - indeed, of 15 nations that have registered objections, 11 of them find the United States reservation on the death penalty as applied to anyone incompatible with the object and purpose of the Covenant.

Declaration that the Covenant is not self-executing

7. To ensure that remedies exist for violations of the rights guaranteed by the Covenant, Human Rights Watch believes the United States Government is obliged to grant Americans the right to invoke the protections of the treaty in United States courts. The United States Government should adopt the position that human rights provisions contained in multilateral instruments are, in principle, self-executing. The only exception should be those provisions that by their nature are not immediately operational, such as an article in which a State party pledges to create a fund for victims of torture. In the alternative, the United States Government should enact specific legislation enabling people in the United States to invoke the ICCPR in United States courts. Human Rights Watch would prefer a formal declaration that the treaty is self-executing, and thus invocable in United States courts without further legislation. We have also called on the Clinton Administration to repeal all restrictive reservations, declarations and understandings and thus to break with the Bush Administration's determination not to allow international human rights law to add to rights enjoyed in the United States.

8. The declaration by the Bush Administration that the International Covenant on Civil and Political Rights is not self-executing, and the accompanying refusal to enact legislation to implement the provisions of the Covenant - continued under President Clinton - makes ratification of the International Covenant on Civil and Political Rights an empty act for Americans. The endorsement of the most important treaty for the protection of civil rights yielded not a single enforceable right in addition to those in the United States.

9. Human Rights Watch strongly disputes the view that Americans do not need the protection of the ICCPR. As we have shown in a separate detailed report, the Bush and Clinton Administrations have been wrong in their assessment that the United States already complies with all the treaty's obligations, even after the nullification of some of the rights through restrictive

reservations, declarations and understandings. 1/ In the areas of racial and gender discrimination, prison conditions, immigrants' rights, language discrimination, the death penalty, police brutality, freedom of expression and religious freedom, the United States is now violating the treaty in important respects. As a result, the Clinton Administration remains under an immediate legal obligation to remedy these human rights violations, and to provide Americans the ability to ensure enforcement by resort to United States courts.

Recommendations

10. Because of the role that restrictive reservations, declarations and understandings play in weakening international human rights law, Human Rights Watch calls upon the Commission on Human Rights to adopt a statement deploring the extensive recourse to these measures and urging their withdrawal. It also asks the Commission to urge States parties to each treaty to reject those reservations, declarations and understandings that are incompatible with the object and purpose of the instrument, including those that have the effect of denying victims of rights violations any recourse to rely on the treaty in domestic courts.

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1/ **Human Rights Violations in the United States, Human Rights Watch and the American Civil Liberties Union, January 1994.**